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George Likourezos, Esq. 261 Washington Ave. St. James, NY 11780				
EXAMINER				
KESACK, DANIEL				
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3691				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/044,075

Applicant(s)

LIKIOUREZOS ET AL.

Examiner

Daniel Kesack

Art Unit

3691

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 12, 16, 17, 27, 32, 40, 41, 44, 47, 49, 55, 61, 62 and 70-111 is/are pending in the application.
4a) Of the above claim(s) 27, 32, 40, 55, 61, 62, 70, 71, 73-96 and 101-111 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1, 2, 12, 16, 17, 32, 41, 44, 47, 49, 72 and 97-100 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 25, 2008 has been entered.

Status of Claims

2. Claims 1, 2, 12, 16, 17, 27, 32, 40, 41, 44, 47, 49, 55, 61, 62, 70-111 are currently pending. The rejections are as stated below.

Election/Restrictions

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1, 2, 12, 16, 17, 32, 41, 44, 47, 49, 72, and 97-100, drawn to creating payment accounts, receiving an indication to initiate payment, and effecting payment to a seller.
- II. Claims 27, and 106-111, drawn to maintaining payment accounts, receiving an indication to initiate payment, and loaning funds to the buyer to effect payment.
- III. Claims 55, 40, and 61, drawn to providing an incentive offer to a user for using a payment account.
- IV. Claims 62, 70, and 71, drawn to transacting the purchase of an auction item prior to receiving any bids on the item.
- V. Claims 73 and 74, drawn to effecting payment to an electronic commerce merchant by transferring funds from a financial system to a payment account.
- VI. Claims 75-81, receiving authorization to effect payment at a electronic commerce website via a payment service independent of the electronic commerce website.
- VII. Claims 82-85, drawn to a database having payment accounts and a processor for allocating funds to payment accounts.
- VIII. Claims 86 and 87, drawn to an auction server executing auctions, and a payment server for identifying winning bidders and effecting payment for the winning bidder.

- IX. Claims 88-96, drawn to processing the conclusion of an auction sale, effecting payment, and enabling account management functions.
- X. Claims 101-105, drawn to displaying a payment page and receiving input from a buyer via selection of an icon for affecting payment.

The inventions are distinct, each from the other because of the following reasons:

The inventions are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if at least one subcombination is separately usable.

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claims depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

- 4. Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above

and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

- (a) the inventions have acquired a separate status in the art in view of their different classification;
- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;
- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time

of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Mr. George Likourezos on December 16, 2008 a provisional election was made without traverse to prosecute the invention of group I, claims 1, 2, 12, 16, 17, 41, 44, 47, 49, 72, and 97-100. Affirmation of this election must be made by applicant in replying to this Office action. Claims 27, 32, 40, 55, 61, 62, 70, 71, 73-96, and 101-111 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one

or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 1, 2, 12, 16, 17, 32, 41, 44, 47, 49, 72, and 97-100 are rejected under 35 U.S.C. 103(a) as being unpatentable over German et al., U.S. Patent No. 7,177,836, in view of Rowe, U.S. Patent Application Publication No. 2002/0029339, and further in view of Harrison, Jr., U.S. Patent No. 7,343,339.

Claim 1, German discloses a system and method for facilitating transactions between consumers over the internet, comprising:

receiving informational data from users via at least one web page accessible via at least on web page of the electronic auction web site (column 21 line 60 – column 22 line 35);

identifying a plurality of payment accounts which store funds therein and correspond to a plurality of users of the electronic auction web site using the information data received via at least one web page accessible via the at least one web page of the electronic auction web site (column 22 lines 19-35);

linking said plurality of payment accounts to at least one computing device of the electronic auction system (column 22, lines 19-35, via the payment accounts are linked through the connection of the auction site and the payment enabler);

determining the conclusion of the auction sale by the electronic auction system (column 9 lines 33-37 and column 22 lines 52-59);

sending an email by the electronic auction system to the winning bidder (column 22 lines 60-65);

receiving via the electronic auction website at least one input from the winning bidder indicating an initiation to effect payment to the seller (column 22 lines 60-62);

providing a payment page to the winning bidder after receiving the input from the winning bidder, said payment page displaying the amount of funds to be deducted from a payment account of the plurality of payment accounts corresponding to the winning bidder (column 23, lines 19-25);

receiving authorization from the winning bidder to proceed with effecting payment to the seller (column 23 lines 19-36);

deducting funds from the payment account storing funds therein and corresponding to the winning bidder, and using at least a portion of the deducted funds to effect payment to at least the seller, wherein the method for effecting payment does not require any interaction between the winning bidder and the seller (column 3 lines 24-41).

German teaches identifying a payment account which has already been created, as cited above. German fails to teach creating and maintaining the payment account, and displaying a link for providing access to the payment account for viewing the amount of funds stored therein.

Rowe discloses a system and method for facilitating monetary and commercial transactions, wherein a user establishes a payment account with an account provider for storing funds therein (paragraphs 29-31) and for viewing account balances on the provider website (paragraph 83). It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of German to include the account creation and balance checking features of Rowe because German is concerned with combining the transaction facilitation steps with the payment steps, and keeping them seamless from the point of view of the consumers. German teaches payment accounts, and it is necessary that a payment account must be created by a

user before the user can effect payment. Rowe simply discloses a known method of creating a payment account. Furthermore, having the account management features built into the features provided by transaction facilitator of German would further streamline the payment and transaction processes, because the consumer would not need to establish the account with a third party before participating in the transaction.

German and Rowe fail to teach providing the plurality of users an option to enable an automatic payment service, wherein the automatic payment service automatically effects payment after occurrence of a termination event associated with the network transaction.

Harrison Jr teaches a system and method for enabling payments for Internet auctions, wherein the buyer and seller accounts are established, and payment is automatically wired to the seller immediately after the auction closes (column 19 lines 62-67). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the teachings of German and Rowe to include this as an option because automation is a desirable feature in any electronic system, and the inclusion of this feature would allow payment to be automated so that the transaction can be completed as quickly as possible. While Harrison does not explicitly teach it as an option, it would be obvious to provide it as an option, and not mandatory because German teaches a user may desire to review the terms before completing a transaction, in case the user disagrees with some of the seller's terms (column 23 lines 26-32).

Claim 2, German teaches using at least another portion to effect payment to an operator of the electronic auction site (column 2 lines 52-55).

Claims 12, 16, 17, 32, 44, 47, 49, 97, 98, 100, the claim limitations are substantially similar to the limitations of claims 1 and 2, rejected above, and are rejected for the same reasons.

Claim 41, German, Rowe, and Harrison, Jr. fail to teach investing the funds and transferring a portion of the funds earned by investing to the buyer's account.

Official Notice is taken that paying interest to an account holder on funds held in the account is old and well known in the art. Financial institutions which hold a customer's money regularly invest the money and return a portion of the money to the account holder as an interest payment. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teaches of German and Rowe to include investing the funds and returning a portion to the buyer because it provides incentive for the buyer to use the service and hold funds in the account, and it provides the account provider with an additional source of income.

Claims 72, 99, the limitations are taught by the references, as cited above in relation to claims 1 and 2. Examiner notes that while German does not explicitly teach using the funds for "complying to an incentive offer", the claim recites "wherein said

incentive offer provides for the performance of an activity via said electronic auction web site which will cause a change in the amount of funds stored in a user's corresponding payment account." As such, Examiner considers taking part in an electronic auction, as taught by German, to be "complying to an incentive offer," the offer being the ability to take part in an auction, because complying to this "offer" would yield the claim limitation, which is the performance of an activity (winning an auction) which will cause a change in the amount of funds stored in a user's payment account (it will cause the system to transfer money to the seller).

Response to Arguments

6. Applicant's arguments with respect to claims 1, 2, 12, 16, 17, 32, 41, 44, 47, 49, 72, and 97-100 have been considered but are moot in view of the new grounds of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Kesack whose telephone number is (571)272-5882. The examiner can normally be reached on M-F, 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Respectfully Submitted,

Daniel Kesack
December 17, 2008
/D. K./
Examiner, Art Unit 3691

/Hani M. Kazimi/
Primary Examiner, Art Unit 3691